

A.G. Contract No.: KR05-0206TRN
ECS File No.: JPA 04-135
Project No.: F-029-1-506
Section: SR 69, MP 282.50
Project: North of Bradshaw Mtn. Road
TRACS No.: H6723 01C
Budget Source Item No.: 73305 District Minor

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE QUAILWOOD MEADOWS, LLC

THIS AGREEMENT is entered into this date October 6 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and QUAILWOOD MEADOWS, LLC, A DELAWARE LIMITED LIABILITY COMPANY (the "Developer"), collectively "the Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The undersigned, in his capacity as Division President of Developer's Managing Member, is authorized to execute this Agreement on behalf of the Developer.

3. Incident to the widening improvements by the Developer in 2003 to provide dual left turn lanes as part of the State Route (SR) 69 and Bradshaw Mountain Road intersection construction, the distance from the new edge of the payment to the existing 10' x 8' box culvert became close to encroaching upon the clear zone safety distance that is required by the State. The Developer and the State agree that it is mutually beneficial for the Developer to extend the box culvert out of the ADOT Right-of-Way, as part of the Developer's next phase of construction, at an estimated cost of \$327,571.12. The 113' box extension, approximately 1/3 of which will be within the State's right-of-way, will significantly improve the clear zone safety distance, hereinafter referred to as the "Project". The Developer shall have a separate Agreement with the Town regarding maintenance.

4. The Developer hereto agrees to and acknowledges to the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

SCOPE OF WORK

1. The State shall:

- a. Agree to allow the Developer to design the Project, call for bids, award and administer one or more construction contract(s) and make payments to the contractor.
- b. Review the design documents and provide review comments to the Developer and approve the final design as appropriate.
- c. Grant the Developer a Right-of-Way Use Permit through the Prescott District Maintenance Office, for work outside the State's Control of Access, but within the State's right-of-way, to permit the Developer to perform all planned construction work for the Project.
- d. Upon execution of this Agreement and within thirty-days (30) upon receipt and approval of an invoice from the Developer, remit to the Developer one-third of the actual cost of the Project in an amount not to exceed \$108,098.46.
- e. Upon completion of the Project, perform the final inspection and notify the Developer in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

2. The Developer shall:

- a. Prepare to State standard and provide design plans, specification and other such documents and services required for construction bidding and construction of the Project and submit same to the State for concurrence.
- b. Advertise for bids and award one or more construction contract(s) for the Project. Administer contracts for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation.
- c. Incorporate the State's review comments into the final design.
- d. Obtain the necessary Right-of-Way Use Permit through the Prescott District Maintenance Office to perform all planned construction work of the Project.
- e. Upon execution of this Agreement, invoice the State for the one-third of the actual cost of the Project in an amount not to exceed \$108,098.46.
- f. Be responsible for two-thirds of the actual cost of the Project, or the actual cost less the State's contribution of \$108, 099.46, whichever is greater. The Developer's cost is currently estimated at \$219,472.66.
- g. Upon completion and acceptance of the Project, reimburse the State any difference between the amount paid by the State and 1/3 of the actual cost for construction of the Project.
- h. Pursuant to the Developer's agreement with the Town of Prescott Valley and upon completion of the box culvert extension and acceptance by the Town, the Developer will dedicate the new box culvert extension to the Town and the Town will accept responsibilities for the box culvert extension and outlet, as shown in Exhibit "A", attached herein and made a part hereof.

III. MISCELLANEOUS PROVISIONS

1. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the Developer for the vicarious liability of the State as a result of entering into this Agreement. Each party to this Agreement is responsible for its own negligence.

2. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

3. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the Developer will bear all costs associated therewith.

4. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

5. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

Quailwood Meadows, LLC
Attn: Jerry Abbott, Division President and
Douglas Hare, VP of Construction
1016 W. University Ave., Suite 202
Flagstaff, AZ 86001
(928) 214-9683

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the respective parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

QUAILWOOD MEADOWS, LLC, a Delaware
limited liability company

By: Empire Land, LLC, a California limited liability
company, its Sole Member

By: Empire Partners, Inc., a California
corporation, its Managing Member

By 
JERRY ABBOTT
Division President

STATE OF ARIZONA
Department of Transportation

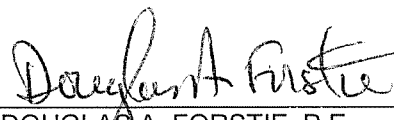
By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations



EXHIBIT A

Town of Prescott Valley

7501 E Civic Circle
Prescott Valley
Arizona 86314

June 15, 2005

Jim Confer - Project Development
Arizona Department of Transportation
1109 Commerce Drive
Prescott, AZ 86305

RE: Highway 69 Box Culvert Extension

Dear Mr. Confer:

As a part of the development improvements located along Highway 69 at Milepost 282.50, the box culvert located north of Bradshaw Mountain Road was extended to improve traffic access in the area. The work undertaken by the Developer (with review and participation by both the Department of Transportation and the Town of Prescott Valley) extended this structure beyond the DOT right-of-way limits to include a frontage road

Due to this extension of the structure, and the outlet being located outside of the DOT right-of-way limits, it is the Town's intent to accept maintenance responsibilities for the extended portion and outfall of the structure. These responsibilities would be limited only to the section outside of the DOT right-of-way. The Town assumes no responsibility, or liability, for any situation arising in the State right-of-way

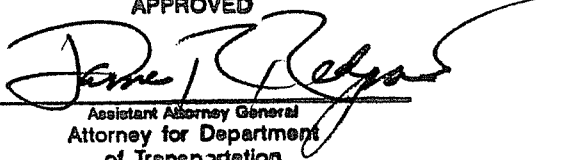
We hope this letter clarifies the maintenance requirements for this extended culvert. Our point of contact for the Town is Ken Stanton, Public Works Operations Manager, and he can be reached at (928) 759-3089.

Sincerely,

Larry Tarkowski
Town Manager

:ks

APPROVED


Assistant Attorney General
Attorney for Department
of Transportation

Date 9/9/05

APPROVAL OF QUAILWOOD MEADOWS, LLC

I have reviewed the above referenced Agreement between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION and QUAILWOOD MEADOWS, LLC, a Delaware limited liability company, and declare this Agreement to be in proper form and within the powers and authority granted to the DEVELOPER under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement, or any other matter or aspect related to Developer or the Project that is not specifically provided for above.

DATED this 30th day of August, 2005.

A handwritten signature in black ink, appearing to read "Paul R. Roman", written over a horizontal line.

Attorney

Paul R. Roman
Director of Legal Affairs